IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 783 of 1980
with
FIRST APPEAL No 846 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO LTD

Versus

MINOR MUKESHKUMAR J PATEL THROGUARDIAN JIVABHAI K PATEL

Appearance:

1. First Appeal No. 783 of 1980
MR PV NANAVATI for Petitioner No. 1
MR YN RAVANI for Respondent No. 1
RULE SERVED for Respondent No. 2-3

2. First Appeal No. 846 of 1980
MR YN RAVANI for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/07/2003

COMMON ORAL JUDGEMENT

Both these First Appeals arise from the judgement and award dtd.29/12/1979 passed by the Motor Accident Claims Tribunal No.1, Mehsana in Motor Accident Claim Petition No.117 of 1979 filed by the claimant namely Mukeshkumar Jivabhai Patel, through his guardian and father, Jivabhai Kashiram Patel, wherein at the end of hearing, the Tribunal has partly allowed the petition by awarding compensation of Rs.11,034/= with running interest at the rate of 6% from the date of the petition till realisation in favour of the original applicant with costs and directed the opponent No.3 Insurance Company to satisfy the award.

First Appeal No.783 of 1980 is filed by the United India Insurance Company Limited - original opponent No.3 against the aforesaid judgement and award of the Tribunal while First Appeal No.846 of 1980 is filed by Shri Mukeshkumar Jivabhai Patel, through his guardian and father Jivabhai K. Patel - original applicant for enhancement of compensation.

2. Short facts leading to the present First Appeals are as under;-

On 9/12/1978, when the original applicant and other children were playing near Gin at Village Lodra, a public carrier bearing registration No.GTE-8123 driven by the original opponent No.1, came in a rash and negligent manner and dashed with the minor applicant namely, Mukeshkumar causing him fracture and permanent partial disability to the extent of 12% on the body as a whole. The applicant remained in Civil Hospital as an indoor patient for a period from 9/12/1978 to 21/12/1978. The applicant, therefore, filed the M.A.C.P. No.117 of 1979 claiming compensation of Rs.40,000/- against the driver, owner and insurance company of the said vehicle.

The opponent Nos.1 and 2 i.e. driver and owner, though served, neither appeared nor filed written statement before the tribunal. The opponent No.3 i.e. insurance company filed its written statement at Ex.33 denying the averments raised in the claim petition and liability to pay the compensation. It was denied that opponent No.1 was driving the public carrier at the relevant time. It was contended that the insurance company did not know as to whether the driver who was driving the vehicle at the time of accident, was holding a valid licence or not. Since the driver who was holding

licence did not admit it, it should be proved. It was denied that the driver of the vehicle was driving rashly and negligently resulting into accident and causing permanent disability to the applicant. It also denied the accident, treatment, educational career etc. It was contended that if any breach of terms and conditions of the policy was committed, the insurance company is not liable to satisfy the claim.

Necessary Issues were framed by the Tribunal at Ex.9. To prove the case, the applicant's father was examined at Ex.39, Dr.Nandkishore Parikh at Ex.51, Kalabhai at Ex.50, Orthopedic Surgeon Dr.N.R. Patel at Ex.51, whereas the insurance company - opponent No.3 examined driver-opponent No.1 at Ex.67.

3. While deciding issue No.1, the tribunal has discussed the evidence of witness Kalabhai in para 6 of the judgement in detail and came to the conclusion that Kalabhai is not clear as to whether opponent No.1 driver, namely Anamikkumar was driving the public vehicle at the relevant time. However, it is only established that son of the driver was driving but it is not established that opponent No.1 was driving the vehicle. The insurance company has examined the driver by way of witness summons at Ex.67 who has stated that he never drove any vehicle as he did not hold any licence.

In short, the evidence upon which the applicant and the opponent No.3 have relied upon is that of Kalabhai and driver opponent No.1. But there is no evidence to establish that opponent No.1 was driving the vehicle in question at the relevant time and therefore, it can not be said that the person who was driving the vehicle at the relevant time was unauthorized to drive the vehicle. It is not the contention of the opponent No.2 owner that the person who was driving the vehicle at the relevant time, was unauthorized person and, therefore, it is for the insurance company - opponent No.3 to establish that the driver had no valid licence or was not authorized to drive the public carrier. It is established law that the driver of the vehicle who was driving the vehicle at the time of accident, need not be a necessary party to the Motor Accident Claim Petition and in absence of driver, owner of the vehicle can be held liable for the compensation if it is established that the driver was driving the vehicle for and on behalf of the owner of the vehicle. In short, it is not proved that the person who was driving the vehicle, was not holding a valid licence at the time of accident. It is also not established that the opponent No.1 was driving

the vehicle at the relevant time. Keeping in mind the above aspects of the matter, the finding recorded by the tribunal is just and proper and the tribunal has rightly come to the conclusion that the driver was driving the vehicle for and on behalf of opponent No.2 at the time of accident and therefore, opponent No.3 - insurance company is also vicariously liable.

4. As far as the aspect of negligence is concerned, the injured - applicant was aged about 9 years at the time of accident and therefore, other aspects are not required to be gone into. What is required to be done by the insurance company as regards licence has been settled by the Apex Court in various judgements and therefore, further discussion is not required. However, reliance is placed on the decision of the Apex Court on the case of New India Assurance Co., Shimla versus Kamla and others, reported in A.I.R. 2001 S.C. 1419 and on the case of United India Insurance Co. Ltd. versus Lehru and others, reported in A.I.R. 2003 S.C. 1292. In these circumstances, the question regarding the person driving the vehicle not having valid licence at the time of accident does not arise as it has not been established that the opponent No.1 was driving the vehicle at the relevant time, and therefore, other aspects are not required to be considered.

5. Now, the question arises with regard to compensation. So far as the compensation is concerned, the applicant has claimed a lump-sum amount of Rs.40,000/-, not specifying the heads under which the claim was made. The father of the applicant is examined at Ex.49 who has categorically deposed that at the time of accident, his son was aged about 9 years and was playing and at that time, opponent No.1 who was driving his vehicle rashly and negligently dashed with his son. As a result of which, his son sustained severe injuries and was taken to Civil Hospital, at Ahmedabad where he was admitted as an indoor patient from 9/12/1978 to 21/12/1978. Thereafter also, minor applicant was treated by Dr.Nandkishor Patel and, as per his deposition, applicant is slightly limping while walking and there are scars on the back and sometimes he suffers pain and therefore, he returns from the school between 2.00 p.m. and 3.00 p.m. He has also deposed that he has spent Rs.1033/- towards medical expenses at the time when the applicant was admitted in Civil Hospital, Ahmedabad as an indoor patient. To prove his submission, he has submitted medical bill Ex.40. He has further deposed that the applicant has permanent partial disability. In support of his submission, he has produced certificate

issued by Orthopedic Surgeon Mr.Nandkishore Parikh. The applicant has also examined Dr.Nandkishore, Ex.50 and proved Disability Certificate Ex.51 and Discharge Card Ex.52 issued by Civil Hospital. Considering all aspects of the matter including medical expenses and disability to the extent of 12%, the learned tribunal has awarded a total compensation of Rs.11,043/-.

6. I have heard the learned counsel for the respective parties on the point of quantum. Learned counsel for the respective parties have argued at length and ultimately requested this court not to award compensation under separate heads. It is to be noted that the applicant, on account of accident, was shifted from Village Lodra, Taluka Vijapur, District Mehsana to Civil Hospital, Ahmedabad where he was admitted as an indoor patient from 9/12/78 and 20/12/1978 for which a special vehicle was hired. During the hospitalization also, certain amount must have been spent towards treatment, attendance and transportation. Thereafter also the applicant was treated by Dr.Parikh, a private doctor, who had treated the applicant in Civil Hospital, Ahmedabad. Being a poor person residing in village, one cannot imagine to have kept bills and vouchers for the amount spent by him. It is also the case of the applicant that he has spent certain amount towards medical treatment after discharge from the hospital. To prove the same, he has produced note Ex.40. However, it appears that the tribunal has not considered the facts that the applicant was admitted in Civil Hospital, Ahmedabad as an indoor patient for 10 days; he had spent amount for transportation; special diet; medicine; rickshaw fare; and other miscellaneous expenses for which he had no bills or vouchers. Further, the applicant was treated in private hospital by Dr. Parikh. After prolonged treatment and after examining the applicant, Dr.Parikh has issued disability certificate stating that the applicant is having 12% permanent partial disability on the body as a whole. It is true that the applicant is son of an agriculturist and at the time of accident he was studying, Therefore, if it is presumed that the applicant would be working as an agriculturist in future, then also, on account of his disability, he would not be in a position to do his work like a healthy person, which would reduce his future income. Further, the order of the tribunal in awarding Re.1/- per day towards his future economic loss considering his disability and in applying the multiplier of 15, is the lower side considering the totality of the facts. Moreover, considering the devaluation in rupee by passage of time, and all other aspects of the matter, if an amount of

Rs.10,000/- more in addition to Rs.11,034/- is awarded, the ends of justice would be met.

7. In the result, First Appeal No.783 of 1980 is dismissed. First Appeal No.846 of 1980 is partly allowed. The judgement and award dtd.29/12/1979 passed by the Motor Accident Claims Tribunal No.1, Mehsana in M.A.C.P. No.117 of 1979 is modified and the compensation is enhanced from Rs.11,034/- to Rs.21,034/- (Twenty One Thousand and Thirty Four only) with interest at the rate of 9% per annum from the date of filing of M.A.C.P. No.117 of 1979 till realisation, with costs. Rest of the award will remain as it is.

(R.P. DHOLAKIA,J.)

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